

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FRANK D RIVES, JR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-04567-JPH-TAB
	)	
JOHNNY WILSON,	)	
DENNIS BOYLE,	)	
CHRISTOPHER MYERS,	)	
MARK LUTHER,	)	
JOHN VAHLE,	)	
MARION COUNTY SHERIFF	)	
DEPARTMENT,	)	
	)	
	)	
Defendants.	)	

**ORDER SCREENING AMENDED COMPLAINT,  
DISMISSING DEFICIENT CLAIM, AND  
DIRECTING ISSUANCE AND SERVICE OF PROCESS**

Indiana prison inmate Frank D. Rives, Jr. commenced this 42 U.S.C. § 1983 action on November 8, 2019, alleging five police officers viciously beat him. Dkt. 2. *In forma pauperis* status has been granted. Dkt. 11. On December 9, 2019, the Court screened Mr. Rives's complaint, allowing his claims against the individual officers to continue, but dismissing his claims against the Marion County Sherriff Department. Dkt. 13. The Court gave Mr. Rives until January 10 to file a motion to reconsider. *Id.* at 4. In response, Mr. Rives filed an amended complaint, no longer naming the Marion County Sherriff Department as a defendant and listing Eskenazi Hospital as a new defendant Dkt. 18. The amended complaint makes the same allegations as the prior complaint. *Id.*

In screening the amended complaint<sup>1</sup> as required by 28 U.S.C. § 1915A(b), the Court finds that the claims against Eskenazi Hospital cannot proceed. Mr. Rives has sued Eskenazi Hospital under 42 U.S.C. § 1983. Dkt. 18 at 1. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *L.P. v. Marian Catholic High Sch.*, 852 F.3d 690, 696 (7th Cir. 2017). Here, the amended complaint contains no facts alleging that Eskenazi Hospital was acting under the color of state law when it allegedly deprived Mr. Rives of his rights. Therefore, the claims against Eskenazi Hospital are **DISMISSED**. See *Reed v. Columbia St. Mary’s Hosp.*, 782 F.3d 331, 337 (7th Cir. 2015) (affirming dismissal of section 1983 claims against hospital).

For the reasons stated in its prior order, dkt. 13, the claims against the Marion County Sherriff Department are **DISMISSED**. The clerk **is directed** to remove the Marion County Sherriff Department from the caption.

The section 1983 claims against Officers Johnny Wilson, Dennis Boyle, Christopher Myers, Mark Luther, and John Vahle **shall proceed**.

These are the claims the Court discerns in the amended complaint. If Mr. Rives believes that additional claims were alleged in the amended complaint but

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<sup>1</sup> In its prior screening order, the Court mistakenly referred to Mr. Rives’s complaint as an amended complaint. The complaint at dkt. 18 is Mr. Rives’s first amended complaint.

not identified by the Court, he shall have **through January 27, 2020**, in which to identify those claims.

Mr. Rives's motion for court assistance is **GRANTED** to the extent that the **clerk shall include** an endorsed, but otherwise blank subpoena with Mr. Rives's copy of this Order. Dkt. [15]. It is Mr. Rives's responsibility to ensure the subpoena is properly served.

The **clerk is directed** pursuant to Federal Rule of Civil Procedure 4(c)(3) to issue process to defendants Johnny Wilson, Dennis Boyle, Christopher Myers, Mark Luther, and John Vahle in the manner specified by Rule 4(d). Process shall consist of the amended complaint, dkt. 18, applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

**SO ORDERED.**

Date: 12/27/2019



James Patrick Hanlon  
United States District Judge  
Southern District of Indiana

Distribution:

FRANK D RIVES, JR  
852403  
MIAMI - CF  
MIAMI CORRECTIONAL FACILITY  
Electronic Service Participant – Court Only

MIAMI E-FILE(COURT USE ONLY)  
MIAMI CORRECTIONAL FACILITY (MCF)  
Electronic Service Participant – Court Only

Johnny Wilson  
Marion County Sheriff's Office  
40 S Alabama St.  
Indianapolis, IN 46204

Dennis Boyle  
Marion County Sheriff's Office  
40 S Alabama St.  
Indianapolis, IN 46204

Christopher Myers  
Marion County Sheriff's Office  
40 S Alabama St.  
Indianapolis, IN 46204

Mark Luther  
Marion County Sheriff's Office  
40 S Alabama St.  
Indianapolis, IN 46204

John Vahle  
Marion County Sheriff's Office  
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